maturity the essential certainty of the note is not thereby destroyed.[10] Moreover, during currency it serves as a sort of guarantee and facilitates rather than impedes negotiability.[11] Logically the amount of the note and the attorney's fees cannot be recovered in a single action since no cause of action exists for the latter until a suit on the note has been instituted.[12] This, however, seems unnecessarily strict, and many courts disregard it.[13]

Courts are frequently required, as in a recent case, *Bank* v. *McCall* (Okl. 1910) 106 Pac. 866, to determine the force of a provision for attorney's fees in the event of foreclosure, inserted in a mortgage securing the note. It is elementary that contemporaneously executed agreements relating to the same subject matter must be construed together as a single contract.[14] A note may be affected in this manner, but a *bona fide* purchaser for value of the note alone takes free from such collateral limitations. This rule of construction is not of necessary application, however, if the limiting instrument is a mortgage, since the nature and purpose of the two instruments differ materially; nor are they governed by the same branch of the law. Of course, conditions in a mortgage may be incorporated into a note by reference, although reference to a part will not serve to incorporate the whole.[15] Where, however, covenants are inserted merely to preserve the security, the note is unaffected thereby since the instruments though part of the same transaction are separate contracts relating to distinct subject matters.[16] Nor ought personal convenants to have any effect; their enforcement does not require resort to the note,[17] and a recognition of their influence subverts the high character of a note by subordinating it to the security.[18] Provisions for attorney's fees in the event of foreclosure are apparently personal covenants, unless made a lien upon the property, and the denial of their effect upon the negotiability of the note secured, where recognition would render the note non-negotiable, as in the jurisdiction of the principal case, is commendable.

THE DUTY OF CARRIERS OF PASSENGERS TO ACCEPT ALL APPLICANTS FOR TRANSPORTATION.—*Prima facie* every applicant is entitled to become a passenger,[1] but this right, of necessity, is subject to certain limitations. These limitations group themselves around two principles: the duty of the carrier to other passengers, and the right of the carrier to protect its own interests.

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[10]Stapleton *v.* Louisville Banking Co. (1895) 95 Ga. 802.

[11]Oppenheimer *v.* Bank (1896) 97 Tenn. 19.

[12]Easter *et al. v.* Boyd (1875) 79 Ill. 325.

[13]Wilson Sewing Machine Co. *v.* Moreno *supra.*

[14]Munro *v.* King (1877) 3 Colo. 238; Elmore *v.* Hoffman *et al.* (1858) 6 Wis. 67.

[15]Donaldson *v.* Grant (1896) 15 Utah 231; Chapman *v.* Steiner (1897) 5 Kan. App. 326.

[16]Frost *v.* Fisher (1899) 13 Colo. App. 322; Thorp *v.* Mindeman (1904) 123 Wis. 149.

[17]Klokke *v.* Escailler (1899) 124 Cal. 297.

[18]Owings *v.* McKenzie (1895) 133 Mo. 323. *Contra,* Garnett *v.* Meyers (1902) 65 Neb. 287.

[1]N. & W. R. R. Co. *v.* Galliher (1893) 89 Va. 639.

Despite the earlier view by which a carrier was held responsible to its passengers only for express negligence[2] the modern tendency, due largely to the increased danger latent in modern modes of transportation,[3] is to impose on the carrier the duty of exercising the utmost degree of care which human foresight can suggest in view of the character of the conveyance employed.[4] This duty, is not confined to guarding against defective appliances and careless operation, but also requires protection from other passengers.[5] Accordingly, those whose presence becomes, in transit, a menace or burden may be ejected, and in many cases must be.[6] This duty in a given case, however, arises only when the danger is discovered and no liability attaches to the carrier for injury previously done unless his ignorance be inexcusable.[7] Moreover, there seems to be no initial duty to ascertain peculiarities attaching to an applicant. On the other hand, a wide initial discretion as to the acceptance of applicants for carriage has been recognized, and apparently anyone reasonably likely to be dangerous or burdensome to his fellow passengers may be refused. Accordingly, drunkenness,[8] insanity,[9] dangerous or loathsome disease,[10] the intention to gamble,[11] or to commit a crime on the company's property[12] will justify a refusal. It follows logically, too, that those must be excluded whose presence is dangerous because provocative of violence by others. Strike breakers have therefore been properly held refusable.[13]

The right of the carrier to exclude in furtherance of its own interests, though well recognized, is confined to less rigorous limits.[14] Reasonable rules and regulations for the conduct of the business are proper, as essential to the carrier's welfare,[15] and if reasonable means have been employed to promulgate such rules the passenger is charged with knowledge thereof,[16] and non-compliance renders him a trespasser.[17] *A fortiori,* a manifested unwillingness to comply, forfeits the applicant's right to be carried. Further, this right of self-protection enables the carrier to refuse carriage to competitors seeking to do business on its vehicles.[18] Nor can competitors generally, establish

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[2]Crofts *v.* Waterhouse (1825) 11 Moore 133; see Bennett *v.* Dutton (1839) 10 N. H. 481.

[3]Phila. & R. R. Co. *v.* Derby (1852) 14 How. 468, 486.

[4]So. Pac. Co. *v.* Cavin (1906) 144 Fed. 348; Maverick *v.* 8th Ave. R. R. Co. (1867) 36 N. Y. 378.

[5]Savannah Ry. Co. *v.* Boyle (1902) 115 Ga. 836.

[6]Edgerly *v.* Union St. R. R. Co. (1892) 67 N. H. 312.

[7]Brown *v.* Chicago, R. I., & P. Ry. Co. (1905) 139 Fed. 972.

[8]P. C. & St. L. R. W. Co. *v.* Van Dyne (1877) 57 Ind. 576.

[9]Meyer *v.* St. L., I. M. & S. Ry. Co. (1893) 54 Fed. 116.

[10]Paddock *v.* Atchison, T. & S. F. R. R. Co. (1889) 37 Fed. 841.

[11]Thurston *v.* Union Pac. R. R. Co. (1877) 4 Dill. 321.

[12]Vinton *v.* Middlesex R. R. Co. (Mass. 1865) 11 Allen 304; Thurston *v.* R. R. Co. *supra.*

[13]Chicago & A. R. Co. *v.* Pillsbury (1887) 123 Ill. 9.

[14]Jencks *v.* Coleman (1835) 2 Sumner 221.

[15]Gray *v.* Cincinnati So. R. Co. (1882) 11 Fed. 683 & note.

[16]Johnson *v.* Railroad Corp. (1865) 46 N. H. 213.

[17]C. & E. R. R. Co. *v.* Field (1893) 7 Ind. App. 172.

[18]Barney *v.* O. B. & H. Steamboat Co. (1876) 67 N. Y. 301.

such a right by proving the grant of this privilege to an individual.[19] However, the carrier cannot as a complement to this right, exclude an individual merely because he conducts a competitive business elsewhere.[20] Again it is well recognized under this head that a passenger affected with a disability of which the carrier knows, or has reason to know, is entitled to greater care and attention than an ordinary passenger.[21] This added responsibility the carrier should be free to decline especially where its assumption will hamper operatives.

Of course, if the applicant in such cases provides his own caretakers or is willing to pay for additional services, he must be accepted,[22] and in all cases the carrier is liable if an applicant rejected because of seeming incapacity to travel alone can establish his sufficient capacity.[23] It seems therefore that the right to refuse carriage on such grounds depends upon all the circumstances involved in a given case; no fixed tests seem adequate. This is well illustrated by the recent case of *Connors* v. *Cunard S. S. Co.* (Mass. 1910) 90 N. E. 601, in which the court sustained the defendant's refusal to carry by water an applicant who though accompanied by an attendant, was so ill that constant medical attendance was required. This demand upon the defendant was clearly excessive, and therefore unreasonable, since it amounted to a partial conversion of the ship into a hospital; a ground of refusal always recognized.[24] Its unreasonableness in this case was accentuated because the journey was by water. In the case of land carriage hospitals or other adequate facilities abound along the line and in case of necessity or extraordinary demand upon it, the carrier may relieve itself of a portion of the burden. The impossibility of this in a carriage by water clearly justifies a liberal view of the carrier's right to refuse, in such cases.

EQUITABLE PROTECTION OF EASEMENTS.—An easement, being in its nature an incorporeal right, obviously neither trespass[1] nor ejectment[2] will lie for its disturbance. The sole remedy at law is, therefore, an action on the case in which only the actual damages suffered by reason of the disturbance can be recovered.[3] Since there is a remedy at law it is evident that equity cannot claim jurisdiction merely from the fact that an easement is involved.[4] Consequently, to ground equitable jurisdiction, some facts must be alleged showing the inadequacy of the remedy thus afforded.[5] Thus, where the disturbance is of such a nature that damages cannot adequately compensate for the loss, the injury is

[19]The D. R. Martin (1873) 11 Blatchf. 233.

[20]Ford *v.* East Louisiana R. Co. (1903) 110 La. 414.

[21]Croom *v.* Chicago etc. Ry. Co. (1893) 52 Minn. 296.

[22]Pullman Car Co. *v.* Barker (1878) 4 Colo. 344; Croom *v.* Chicago etc. Ry. Co. *supra.*

[23]Zachery *v.* M. & O. R. R. Co. (1896) 74 Miss. 520; Illinois Central R. Co. *v.* Smith (1904) 85 Miss. 349.

[24]Croom *v.* Chicago Ry. Co. *supra.*

[1]Wetmore *v.* Robinson (1818) 2 Conn. 529.

[2]Fritsche *v.* Fritsche (1890) 77 Wis. 270.

[3]Cushing *v.* Adams (Mass. 1836) 18 Pick. 110.

[4]Oswald *v.* Wolf (1889) 129 Ill. 200.

[5]Sanderlin *v.* Baxter (1882) 76 Va. 299.